REMARKS

A. Introduction

Claims 1-16 were presented for examination.

Claims 1-16 were rejected.

B. Claim Rejections under 35 U.S.C. §102(b).

Examiner rejected Claims 1 & 9 under 35 U.S.C. §102(b) as being anticipated by Broillet (U.S. Patent No. 5,863,004). Applicants considered this rejection and respectfully disagree.

Claim 1 recites the following: "A processor for processing native Dead Sea minerals into an ultra fine mineral compound comprising: a conical screen mill having an impeller; and a collecting bin for collecting said ultra fine mineral compound once the native Dead Sea minerals have been forced through said conical screen mill." Claim 9 recites the following: "A processor for processing native minerals into an ultra fine mineral compound comprising: a conical screen mill having an impeller; and a collecting bin for collecting said ultra fine mineral compound once the native minerals have been forced through said conical screen mill." Both Claims 1 and 9, therefore, show a conical screen mill having an impeller *and* a collecting bin.

In contrast, Broillet merely shows a conical impeller and screen to treat powdery material. Broillet does not teach a "collecting bin for collecting said ultra fine mineral compound once the native Dead Sea minerals have been forced through said conical screen mill." Nor does Broillet teach a "collecting bin for collecting said ultra fine mineral compound once the native minerals have been forced through said conical screen mill." Such "collecting bin" simply is not cited in the Broillet reference.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987); Manual of Examining Procedure §2131. As Broillet

does not teach each and every element as set forth in Claims 1 and 9, Broillet does not anticipate Claims 1 and 9. Thus, Applicants overcome Examiner's rejection of these claims under 35 U.S.C. §102(b).

C. Double Patenting Rejection

Examiner rejected Claims 1-16 under the judicially created doctrine of obviousness type double patenting as being unpatentable over Claims 1-7, 9-12 of U.S. Patent Number 6,607,151. Applicants have enclosed in this response a terminal disclaimer in compliance with 37 CFR §1.321(c). The fee of $55 is attached.

D. Claim Rejections Under 35 U.S.C. §103

Examiner rejected Claims 4 and 12 under 35 U.S.C §103(a) as being unpatentable over Broillet. Examiner also rejected Claims 2, 3, 5-8, 10, 11, and 13-16 under 35 U.S.C §103(a) as being unpatentable over Broillet as applied to Claim 1, in further in view of Tumilty, et al. (U.S. Patent No. 6,508,421 B1). Applicants respectfully disagree.

The Examiner bears the initial burden of establish a *prima facie* claim of obviousness. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be some reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on Applicants' disclosure. Manual of Patenting Examining Procedure (MPEP §2142); *In re Vaeck* 947, F.2d 488 (Fed. Cir. 1991). Examiner has failed to establish a *prima facie* case of obviousness.

1. Teaching or Suggesting of all Claim Limitations

The prior art references do not teach or suggest all of the claim limitations. Claims 4 and 12 recite a method for processing native Dead Sea minerals and native minerals, respectively, "into an ultra fine mineral compound comprising the steps of: transporting said native Dead sea minerals into a processor comprising a conical screen mill with impeller; and forcing said native Dead Sea minerals through said conical screen mill with said impeller and into a collecting bin."

First, Broillet does not teach or suggest the following: (1) a method of processing native Dead Sea minerals into an ultra fine mineral compound; (2) transporting the Dead Sea minerals into a processor comprising a conical screen mill with impeller; and (3) forcing the native Dead Sea mineral through a conical screen mill with impeller. In fact, Broillet merely teaches an apparatus, *i.e.*, a granulating machine with a cone-shaped sieve and a rotor. Second, although Broillet discloses that such a machine can be used in the treatment of pharmaceutical products, and the Examiner states that Dead Sea minerals are a known pharmaceutical product, Broillet still does not teach or suggest any *method* by which its application towards pharmaceutical products may be accomplished. Therefore, Broillet fails to teach or suggest that its apparatus can be used in the creation of ultra fine materials from either native Dead Sea minerals or native minerals.

Claims 2 and 3 further limit Claim 1 (recited above) to include "a nuisance collector for collecting debris into a nuisance collection receptacle placed from said collecting bin," and "a cover on said collecting bin for closing said collecting bin to prevent the ultra fine particulate from escaping into the air," respectively. Claims 10 and 11 recite similar language directed to "native minerals" generally. Finally, Claims 5-8 and 13-16, regarding native Dead Sea minerals and native minerals, respectively, recite further limitations on Claims 4 and 12, respectively, including the steps of "collecting debris into a nuisance collection system," "closing the collecting bin to prevent the ultra fine particulate from escaping into the air," "modifying the room atmosphere in which the

processing occurs with a temperature no higher than 78 degrees with cool, dry positive pressure," and "maintaining a low level of heat and moisture to enable the ultra fine mineral compound to remain free-flowing without anti-caking agents."

Broillet does not teach or suggest "a nuisance collector for collecting debris into a nuisance collection receptacle placed from said collecting bin," and "a cover on said collecting bin for closing said collecting bin to prevent the ultra fine particulate from escaping into the air," for either native Dead Sea minerals or native minerals. Further, Broillet does not teach or suggest any method which includes the steps of "collecting debris into a nuisance collection system," or "closing the collecting bin to prevent the ultra fine particulate from escaping into the air." Further, although Broillet does disclose a cooling system for monitoring acceptable temperature levels of various *components* of the apparatus, Broillet does not teach or suggest the steps of "modifying the *room* atmosphere in which the processing occurs with a temperature no higher than 78 degrees with cool, dry positive pressure," and "maintaining a low level of heat and moisture to enable the ultra fine mineral compound to remain free-flowing without anti-caking agents."

Additionally, Tumilty, et al. does not teach or suggest the following: (1) use of a cover on the collecting bin; (2) the step of collecting debris into a nuisance collection system; (3) the step of closing the collecting bin; (4) the step of modifying the room atmosphere to a temperature no higher than 78 degrees; (5) the use of cool, dry pressure; and (6) maintaining a low level of heat and moisture.

Tumilty, et al. merely teach the separation of the crushed material based on size where the smaller size material passes through a screen and the larger material is discharged (column 4, lines 26-31). The separation occurs solely on the basis of size, and, as may be the case, the separated material may be introduced to a second crushing step, clearly indicating that the separated material is not necessarily "unwanted material" as Examiner expressed. In contrast, the separation involved in

the present invention rids of material (that does not constitute native Dead Sea minerals or native minerals) from the desired ultra fine mineral compounds. These truly "unwanted materials" are not reintroduced into the system, but are properly disposed of. In short, the present invention's nuisance collection system is exactly that: a system that removes unwanted materials.

Further, Tumilty, et al. do not teach the use of a cover to prevent the ultra fine particulates from escaping into the air. In contrast, the present invention's use of a cover on the collecting bin is crucial because it ensures the maximum amount of product recovery by preventing the ultra fine particulates from escaping into the air.

2. Non-Analogous Art

To rely on references under 35 U.S.C. §103, the references must be analogous prior art. M.P.E.P. §2041.01(a). In order to rely on a reference as a basis for a rejection of an applicant's invention, the reference must be either in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. In re *Oetiker*, 977 F.2d 1443 (Fed. Cir. 1992). A reference if reasonably pertinent, if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's intention in considering his problem. *Wang Laboratories, Inc.v. Toshiba Corp.*, 993 F.2d 858 (Fed. Cir. 1993).

Respectfully, the prior art references cited by Examiner are not analogous art and were improperly relied on to reject Claims 2, 3, 5-8, 10, 11, and 13-16 of the present invention. The prior art references are clearly outside the field of Applicants' endeavor. The present invention comprises a processor for processing native Dead Sea minerals into an ultra fine mineral compound and a method of processing native Dead Sea minerals into this ultra fine mineral compound. In contrast, Tumilty, et al. speak to crushing mined ores, particularly of transitional metals, to liberate the value bearing material.

Tumilty, et al. also do not have a nuisance collection system per se, as discussed above. Additionally, the present invention includes a cover on the collecting bin to prevent the ultra fine particulates from escaping into the air. In contrast, Tumilty, et al. teach away the minimization of size reduction of the material beyond the degree necessary for value liberation (column 3, lines 17-18). In other words, it is the purpose of Tumilty, et al. to not create ultra fine particulates.

Examiner summarily dismissed the other recited limitations as "design choices" based on factors such as the material being treated and desired end results. Applicant respectfully contends that these "design choices" further illustrate the disparity between the cited references and the present invention. The present invention speaks directly to native Dead Sea minerals and native minerals. Tumilty, et al., on the other hand, speaks to transition metal ores. The end product of the present invention is directed to the consumer of beauty products, whereas the end product of Tumilty, et al. is directed towards the metallurgy industry. Clearly, the materials involved in Tumilty, et al. are substantially distinct from those in the present invention so as to not consider this cited reference as analogous art to the present invention.

In sum, it is clear the Applicants' intention to invent a processor for processing native Dead Sea minerals and native minerals into an ultra fine mineral compound and to invent a method for processing the native Dead Sea minerals and native minerals into an ultra fine mineral compound would not be a suitable apparatus or method to use as Broillet and Tumilty, et al. disclose.

3. Suggestion to Combine References

In addition to being non-analogous art, Broillet does not suggest the use of a collecting bin nor a method for processing product into an ultra fine mineral compound. Further, there is no suggestion in the Broillet reference to combine with Tumilty, et al. in a manner to create an apparatus and method tantamount to the present invention. Also, Tumilty, et al. do not suggest the production of ultra fine mineral compound nor the use of a true nuisance collection system with a cover to

prevent the ultra fine particulates from escaping. Additionally, Tumilty, et al. speak to processing ore in the metal industry, particularly the processing of transition metals, whereas the present invention is directly aimed at native Dead Sea minerals. Further, Tumilty, et al. teach using only as much pressure as will be required to liberate the metal ores, whereas, in a diametrically opposite view, the present invention intentionally pulverizes the material as fine as possible.

Clearly, the materials, methodology, and surrounding circumstances involved in Tumilty, et al. are substantially distinct from those in the present invention so as to not suggest the combination of the prior art references cited by Examiner.

Yet another distinction between the present invention and Tumilty, et al. is that the latter further teaches away the minimization of size reduction of the material beyond the degree necessary for value liberation (column 3, lines 17-18). The present invention, however, intentionally pulverizes all materials introduced to produce an ultra fine compound. Therefore, since no suggestion exists to process Dead Sea minerals into an ultra fine mineral compound and there is no suggestion to even use native Dead Sea minerals or a collecting bin with a cover to prevent the ultra fine particulates from escaping into the air, there would not be any reasonable expectation of success to modify the apparatus and method claimed in these prior art references or to combine these prior art references. The conical screen mill having an impeller and a collecting bin for collecting the ultra fine mineral compound once the native Dead Sea mineral and/or native minerals have been forced through the conical screen mill cannot, thus, be considered obvious in light of Broillet alone or Broillet in view of Tumilty, et al.

CONCLUSION

In view of the above, Applicants submit that Claims 1-16 are in condition for allowance. Applicants respectfully request reconsideration and withdrawal of the rejections. Allowance of Claims 1-16 at an early date are solicited.

If the Examiner still finds impediments to allowance of Claims 1-16 and in the opinion of the Examiner, a telephone conference between the undersigned and the Examiner would help remove such impediments. The undersigned respectfully requests a telephone conference.

Respectfully submitted,

GUNN & LEE, P.C.
700 North St. Mary's Street, Suite 1500
San Antonio, TX 78205-3596
(210) 886-9500
(210) 886-9883 (Fax)

By: 

Michelle L. Evans
Regis. No. 44,673